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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,975	06/11/2007	Jay S. Walker	03-048	9265
22927 7590 05/20/2011 WALKER DIGITAL MANAGEMENT, LLC 2 HIGH RIDGE PARK STAMFORD, CT 06905				
EXAMINER COLLINS, MICHAEL				
ART UNIT 3651		PAPER NUMBER		
MAIL DATE 05/20/2011		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/580,975

**Applicant(s)**

WALKER ET AL.

**Examiner**

MICHAEL COLLINS

**Art Unit**

3651

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 14, 15 and 17-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14, 15 and 17-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-945)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Response to Arguments***

1. Applicant's arguments filed 3/10/2011 have been fully considered but they are not persuasive. Regarding claims 14-15 Applicant argues:

**"a) The reference fails to teach or suggest:** *determining based on profit inventory management data, a set of products that are available for dispensing by the vending machine...*

Viglione fails to teach or suggest *determining based on profit inventory management data, a set of products that are available for dispensing by the vending machine.*

The Examiner relies upon paragraph [0032] and 'step 2' of Viglione as allegedly teaching the above-quoted limitation. Office Action, pg. 6, second bullet.

Applicants respectfully note that paragraph [0032] of Viglione describes providing 'random or mystery jackpot prizes,' the awarding of which is 'determined by the amount of use of the vending machine.' 'Step 2' of FIG. 2 of Viglione describes setting a predetermined prize (such as the random or mystery jackpots).

Applicants are at a loss as to how the Examiner can reasonably equate the setting of random or mystery jackpot prizes in Viglione to the claimed determination of 'a set of products' that are available for dispensing. Nor do Applicants comprehend how any teaching or suggestion in Viglione can reasonably be equated to the storage or use of 'profit inventory management data.'

Applicants respectfully note that basing random or mystery jackpots on the amount of use of the vending machine, simply fails to equate to the above-quoted claimed embodiment. Nowhere does Viglione provide adequate written description of storing or utilizing 'profit inventory management data.'"

However, "profit inventory management data" can reasonably be defined as the management of data regarding profits produced from inventory. Awarding a prize based on the amount of use of the vending machine could reasonably be interpreted as awarding a prize based on profits produced from inventory because each use produces a profit from inventory. Therefore, it is reasonable to interpret Viglione as teaching a "determining based on profit inventory management data."

With regard to the "set of products that are available for dispensing by the vending machine" based on the step of determining, it is reasonable to equate the setting of "random or mystery jackpot prizes" as a determined "set of products" because the prizes are a set of products (see paragraph [0033]) which are chosen based on the amount of vending machine use. Therefore, argument a) is not convincing.

Regarding claims 14-15 Applicant argues:

**"b) The reference fails to teach or suggest:** *receiving, via the game, a selection of a product from the set of products, thereby defining a selected product* (claims **14-15**)

Applicants respectfully assert that Viglione simply fails to teach or suggest limitations of claims **14-15**. For example, Viglione fails to teach or suggest receiving, *via the game, a selection of a product from the set of products, thereby defining a selected product*.

The Examiner relies upon 'step 3' of Viglione as allegedly teaching the above-quoted limitation. Office Action, pg. 6, fourth bullet.

Applicants respectfully note that 'step 3' of FIG. 2 of Viglione is descriptive of determining whether a product is selected by the customer of the vending machine. This step appears to comprise a standard operation of most vending machines - determining

which product a customer wants to purchase.

Such a standard function is quite removed from what is recited in the above-quoted claim limitation. The limitation does not recite determining which product the customer wants to buy - that is recited separately in the first step of claims **14-15**, where the 'first product' (i. e., the product the customer wants to purchase) is determined.

Instead, the above-quoted limitation describes a selection, by the customer, of a product via the game interface - e.g., a product to be acquired by a winning outcome of the game. Viglione simply fails to contemplate such a feature."

However, step 3 leads to the game being played by means of the first product selection (see paragraph [0021]). Viglione teaches that the game itself selects the prize/product and would thereby necessarily define a selected product (see paragraph [0020]). In response to Applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which Applicant relies (i.e., "a selection, by the customer, of a product via the game interface") are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Therefore, argument b) is not convincing.

Regarding claims 17-18 Applicant argues:

**"c) The reference fails to teach or suggest:** *selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the vending machine and (ii) an expected profitability of the vending machine, one of the products offered for sale via the vending machine (claims 17-18)*

Applicants respectfully assert that Viglione simply fails to teach or suggest limitations of claims **17-18**. For example, Viglione fails to teach or suggest *selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the*

*vending machine and (ii) an expected profitability of the vending machine, one of the products offered for sale via the vending machine.*

Applicants have reviewed Viglione and have failed to locate any teaching or suggestion of selecting products to be dispensed as game winnings where the products are selected based on 'an expected profitability of the vending machine'.

Accordingly, at least because Viglione fails to teach or suggest *selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the vending machine and (ii) an expected profitability of the vending machine, one of the products offered for sale via the vending machine*, Viglione fails to anticipate claims 17-

18."

However, Viglione teaches a central controller which monitors stock levels (see the last line of paragraph [0034]), and stock levels are a form of data describing products offered for sale via the vending machine. Viglione teaches using different game formats (see paragraph [0034]) to award free products (see paragraph [0033]) based on a determination of purchases, i.e. of expected profitability (see paragraph [0032]). The selecting by the vending machine is provided by instructions sent from the central controller to the vending machine. For this reason, it is reasonable to interpret Viglione as teaching the above method step because the vending machine selection instruction is **based on** both elements (i) and (ii) as shown above. Therefore, argument c) is not convincing.

Regarding claims 19-22 Applicant argues:

"New claims 19-22 are believed to be patentable over the cited reference at least as described herein. Further, after reviewing the cited reference, Applicants believe that the cited reference fails to teach, suggest, or render obvious at least:

*(i) receiving, by a vending machine and from a customer, an indication of a*

*selection of a plurality of products that are available for dispensing by the vending machine for a single package price (claims 19-22);*

*(ii) determining, by the vending machine and based on stored profit management rules, whether or not the customer is" entitled to a prize (claims 19-22);*

*(iii) outputting, by the vending machine and after the receiving of the indication of the selection of the plurality of products that are available for dispensing by the vending machine for the single package price, a game-themed presentation that indicates to the customer that the determining of whether or not the customer is" entitled to a prize is" based at least in part on input provided by the customer via the game-themed presentation (claims 19-22);*

*(iv) determining the prize, by the vending machine and based on stored product data, to be a specific product available via the vending machine (claims 21-22); or*

*(v) wherein the stored product data comprises one or more of" (i) a number of units of the specific product currently stored in inventory; (ii) an actual sales rate of the specific product," or (iii) a target sales rate of the specific product (claim 22)."*

New claims 19-22 are also not patentable over the cited reference for the reasons which will be shown in this Office Action.

For the foregoing reason claims 14-15 and 17-22 stand rejected.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 14-15 and 17-22 are rejected under 35 U.S.C. 102(e) as being anticipated by Viglione (USPGPUB 2003/0186732).

Regarding claim 14, Viglione discloses a method, comprising:

- receiving, from a customer and by a vending machine, a selection of a first product that is available for dispensing by the vending machine (see step 3);
- determining, based on profit inventory management data (see paragraph [0032]), a set of products that are available for dispensing by the vending machine (see step 2);
- outputting a game to the customer (see paragraph [0024]);
- receiving, via the game, a selection of a product from the set of products, thereby defining a selected product (see step 3);
- vending the selected product (see paragraph [0027]); and
- vending the first product (see paragraph [0027]).

Regarding claim 15, Viglione discloses the method of claim 14, in which receiving, via the game, a selection of a product from the set of products comprises:

- randomly selecting a product from the set of products (see paragraph [0032]).

Regarding claim 17, Viglione discloses a method, comprising:

- initiating a transaction at a vending machine by:
  - receiving, by the vending machine, an indication of a selection of product desired for purchase by a customer (see step 3); and



- receiving, by the vending machine, an indication of payment for the desired product (see paragraph [0019]);
- selecting, by the vending machine and based on (i) data descriptive of products offered for sale via the vending machine (see paragraph [0034]) and (ii) an expected profitability of the vending machine (see paragraph [0032]), one of the products offered for sale via the vending machine;
- outputting, by the vending machine and after the receiving of the indication of the selection of the desired product, a game-themed presentation comprising a game result that is indicative of a winning result comprising a free unit of the product selected by the vending machine (see paragraph [0028]); and
- finalizing the transaction by:
  - dispensing, after the outputting, and by the vending machine and to the customer, a unit of the desired product (see paragraph [0028]); and
  - dispensing, by the vending machine and to the customer, the free unit of the product selected by the vending machine (see paragraph [0028]).

Regarding claim 18, Viglione discloses the method of claim 17, further comprising:

- determining, by the vending machine and based on an analysis by the vending machine of a status of the vending machine and stored profit management rules, to output the indication of the winning result comprising the free unit of the product selected by the vending machine (see paragraphs [0032]-[0034]).

Regarding claim 19, Viglione discloses a method, comprising:

- receiving, by a vending machine and from a customer, an indication of a selection of a plurality of products that are available for dispensing by the vending machine for a single package price (see paragraph [0027]);
- receiving, by the vending machine, an indication of a payment of the single package price (see paragraph [0027]);
- determining, by the vending machine and based on stored profit management rules, whether or not the customer is entitled to a prize (see paragraph [0032]); and
- outputting, by the vending machine and after the receiving of the indication of the selection of the plurality of products that are available for dispensing by the vending machine for the single package price, a game-themed presentation that indicates to the customer that the determining of whether or not the customer is entitled to a prize is based at least in part on input provided by the customer via the game-themed presentation (see paragraph [0026]).

Regarding claim 20, Viglione discloses the method of claim 19, further comprising:

- receiving, by the vending machine, an indication of the input provided by the customer via the game-themed presentation (see paragraph [0026]).

Regarding claim 21, Viglione discloses the method of claim 19, wherein in the case that it is determined that the customer is entitled to the prize, further comprising:

- determining the prize, by the vending machine and based on stored product data, to be a specific product available via the vending machine (see paragraph [0032]-[0034]).

Regarding claim 22, Viglione discloses the method of claim 21, wherein the stored product data comprises one or more of:

- (i) a number of units of the specific product currently stored in inventory (see paragraph [0033]);
- (ii) an actual sales rate of the specific product; or (iii) a target sales rate of the specific product.

### ***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL COLLINS whose telephone number is (571)272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.K.C.  
5/18/11

/Michael K Collins/  
Primary Examiner, Art Unit 3651